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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,351	12/15/2000	Wendel Dean Renner		8932

7590

10/07/2002

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EXAMINER

BARBER, THERESE

ART UNIT

PAPER NUMBER

2882

DATE MAILED: 10/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/736,351

Applicant(s)

RENNER, WENDEL DEAN

Examiner

Therese Barber

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2882

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 8.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings filed on 6 June 2002 have been approved by the Draftsperson.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 6, the applicant has written a single claim that lacks distinguishing features over the prior art regarding radiation dosage verification.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Swerdloff et al. (USPN 5,394,452).

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6. Regarding claim 6, Swerdloff discloses a process of verifying radiation dose to a patient (col. 2, lines 31-34) from an external beam radiation source (col. 5, lines 6-8) comprised of employing the means to measure the output of each treatment beam using the measured output of each beam to calculate the dose to a patient (col. 7, lines 43-55) using a dose algorithm (col. 9, lines 29-61) and using the calculated dose to verify the correctness of the radiation dosage delivered to the patient (col. 14, lines 39-49).

Response to Notice of Non-Responsiveness

7. This application may qualify for “Small Entity Status” and, therefore, applicant may be entitled to the payment of reduced fees. In order to establish small entity status for the purpose of paying small entity fees, applicant must make a determination of entitlement to small entity status under 37 CFR 1.27(f) and make an assertion of entitlement to small entity status in the manner set forth in 37 CFR 1.27(c)(1) or 37 CFR 1.27(c)(3). Accordingly, if applicant meets the requirements of 37 CFR 1.27(a), applicant must submit a written assertion of entitlement to small entity status under 37 CFR 1.27(c) before fees can be paid in the small entity amount. See 37 CFR 1.27(d). The assertion must be signed, clearly identifiable, and convey the concept of entitlement to small entity status. See 37 CFR 1.27(c)(1). No particular form is required.

8. A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim, which depends from a dependent claim, should not be separated by any claim, which does not also depend from said dependent claim. It should be kept in mind that a

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dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

9. Regarding claim 6, the claim is narrative in form and replete with functional or operational language. The structure, which goes to make up the device, must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Furthermore, the primary purpose of this requirement of definiteness of claim language is to ensure that the scope of the claims is clear so the public is informed of the boundaries of what constitutes infringement of the patent. A secondary purpose is to provide a clear measure of what applicants regard as the invention so that it can be determined whether the claimed invention meets all the criteria for patentability and whether the specification meets the criteria of 35 U.S.C. 112, first paragraph with respect to the claimed invention (Manual of Patent Examining Procedure, Section 2173).

10. Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.


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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Therese Barber whose telephone number is (703) 306-0205. The examiner can normally be reached on Monday to Friday from 8:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Kim can be reached on (703) 305-3492. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-4857 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4900.

tb 
September 30, 2002


ROBERT H. KIM
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800